

George A. McCoy; OSB #101256, WSB #52233

[mccoy@warrenallen.com](mailto:mccoy@warrenallen.com)

850 NE 122<sup>nd</sup> Ave.

Portland, OR 97230

(503) 255-8795

Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

OF THE DISTRICT OF OREGON

[PORTLAND DIVISION]

JOSHUA DUNAGAN,

Plaintiff,

v.

MULTNOMAH COUNTY the governing body  
of MULTNOMAH COUNTY SHERIFF'S  
OFFICE and MULTNOMAH COUNTY  
DETENTION CENTER,

Defendant(s).

Case No. 3:19-cv-634

COMPLAINT

Claims for Damages, Including Civil Rights  
Violations

[42 U.S.C. § 1983]

REQUEST FOR JURY TRIAL

**Table of Contents**

- I. PARTIES
- II. JURISDICTION
- III. FACTS
- IV. FIRST CLAIM FOR RELIEF (Deliberate Indifference to Medical Needs)
- V. SECOND CLAIM FOR RELIEF (Unreasonable Treatment/Punishment)
- VI. THIRD CLAIM FOR RELIEF (Conduct that Shocks the Conscience)

**I. PARTIES**

- 1. Plaintiff Joshua Dunagan is an individual domiciled in Oregon.
- 2. Defendant Multnomah County is a public body responsible under state law for the acts and omissions of its employees and officials including those whose conduct is at issue herein and is

the governing body over the Multnomah County Sheriff's Office and the Multnomah County Detention Center.

## **II. JURISDICTION**

3. This Court has jurisdiction over plaintiff's claims by virtue of 28 USC §§ 1331, 1343, and 1367.

## **III. FACTS**

4. Mr. Dunagan was arrested on October 16, 2017 and booked at the Multnomah County Detention Center. During his intake it was noted that he had been released from the hospital four days prior and was at risk for infection. Further, it was noted that he had a cough for the last two weeks and would need the next available health care provider appointment. It was also noted that Mr. Dunagan was likely experiencing withdrawal or intoxication symptoms. His behavior was both "passive and bizarre."

5. Arresting officers noted Mr. Dunagan reported being seen within the last 24 hours at Portland Adventist Medical Center. The nursing staff reviewed Mr. Dunagan's most recent medical history at Portland Adventist and confirmed that he was seen in the Emergency Department on October 12, 2017. Mr. Dunagan was diagnosed with facial cellulitis and told to return to the Emergency Department if he had worsening symptoms.

6. At 6:53 p.m. on October 16, 2017, Mr. Dunagan presented with a visible bump on his head. Mr. Dunagan indicated he had experienced two seizures in the last hour. It is noted throughout his medical records that he had a history of seizures. No physical examination was performed on Mr. Dunagan. At 10:16 p.m. Mr. Dunagan was seen, as his head was pounding. A similar incident occurred the next day at 7:50 p.m.

7. On October 17, 2017, Mr. Dunagan reported that he did not feel well, his head was pounding, and he was experiencing body aches, nausea, and mood swings.

///

///

8. On October 18, 2017, Mr. Dunagan filled out a medical request form indicating that his prescriptions had not shown up at the Multnomah County Detention Center and that he was under distress.

9. On October 19, 2017, Mr. Dunagan indicated to medical staff that he felt “like shit.” He indicated he had not been able to see his primary care physician due to being in custody.

10. On October 20, 2017, Mr. Dunagan submitted another medical request form to have his prescriptions refilled as he continued to be in distress. Medical records indicated Mr. Dunagan had his chart reviewed by Dr. Angelina Platas, however no in-person examination occurred.

11. On October 21, 2017, Mr. Dunagan submitted another medical request form in which he requested that due to his history of neuropathy issues that gabapentin be restarted, and possibly titrate. The request was disregarded based upon Dr. Platas’s refusal to restart Mr. Dunagan’s medication on October 20, 2017.

12. On October 22, 2017, Mr. Dunagan reported chest pains. He had elevated blood pressure. Other vital signs were not taken. Mr. Dunagan was not taken to an Emergency Department, and Mr. Dunagan was not evaluated by a physician. Mr. Dunagan indicated he was in a lot of pain and unable to even lay down.

13. On October 23, 2017, Mr. Dunagan submitted another medical request form. He stated that “last week I was sent a letter from medical stating that I was to see a provider that week and if for some reason I did not, to inquire why and when the new appointment would be. I did not see a provider and am wondering when I will see one.” Medical staff sent Mr. Dunagan a letter indicating that it was a chart review, not an actual visit.

14. On October 25, 2017, Mr. Dunagan submitted another medical request form stating “I need to physically see the provider, not a chart review. This run around is getting out of hand. Please schedule an appointment with the provider, face to face appointment and let me know the date.” The chart notes indicated “no urgent needs noted in client request” and that there were notes

///

from October 21, 2017, through October 23, 2017, with similar request. A visit was noted to be scheduled for December 13, 2017. Medical staff indicated a “risk for ineffective coping.”

15. On October 25, 2017, Mr. Dunagan had a court appearance. He told the Court he was being denied medical care. Later that same day, Mr. Dunagan submitted yet another medical request form indicating “I am severally constipated and have not been able to move my bowels since arrival. I have to manually remove stool by hand. What comes out daily does not equal any percentage of daily intake. I am also causing [having] great pain in left side and fever/nausea.” A physical exam was performed by nursing staff. No physician examined Mr. Dunagan. He was not taken for emergency medical services.

16. On October 26, 2017, Mr. Dunagan was finally seen by physician, Dr. Platas, at the Multnomah County Detention Center. Dr. Platas diagnosed him with chest pain on breathing, left upper quadrant pain, abdominal pain and pleural effusion (fluid in lungs) seen after an x-ray was taken.

17. Mr. Dunagan was then transported to Oregon Health and Science University for emergency medical care. The diagnosis of pleural effusion was confirmed. Daniel Werle, NP noted the following:

Mr. Dunagan was hospitalized at Adventist for sepsis treatment from 13 September - 19 September after falling from a roof injuring his low back and ankles as well as injecting methamphetamine and bath salts. Upon admission, he was treated with vancomycin, cefepime, and metronidazole, later transitioned to oral levofloxacin. He initially did require pressors for hypotension. No evidence of infection was identified on blood cultures, stool cultures, urinalysis, or echocardiogram.

At the time of discharge, he was provided a seven-day course of levofloxacin. He took doses on the first two days, then had all of his possessions stolen, including his antibiotics. On 12 October, he was treated for facial cellulitis with bactrim. On 16 October, he was imprisoned, where he currently remains housed. Earlier today, he reported ongoing left lateral chest wall pain, subjective fevers, and sweats. A chest x-ray was obtained identifying a large, left-sided, pleural effusion, and he was transferred to OHSU for further evaluation and care. On arrival, he was found to be in continued pain.

A chest, abdomen, and pelvis CT was completed, identifying a left lateral and basilar, loculated fluid collection, and mediastinal adenopathy with the largest lymph node measuring 1.2 cm (in long axis). His WBC is 11.9.

Thoracic surgery was called to evaluate Mr. Dunagan for assistance with management of his complex, left sided, pleural fluid collection.

18. From October 26, 2017, through November 8, 2017, Mr. Dunagan received a course of antibiotics and had a tube placed for drainage. The drainage tube was inserted on October 27, 2017, and first removed on November 7, 2017. Mr. Dunagan was provided with strong antibiotics due to the neglected infection including piperacillin-tazobactam and vancomycin. Dosages of the medications were high in order to fight the rampant infection.

19. On November 8, 2017, Mr. Dunagan underwent a surgical procedure related to his left fibrinopurulent empyema and trapped lung. “He has had multiple chest tubes to try and manage pleural effusions, which eventually evolved into a likely lower lobe pneumonia and parapneumonic effusion and empyema. Most recently, he has had continued collapse of the left lower lobe, approximately 30% to 40% of it. After a lengthy discussion with him about decortication versus watchful waiting and some loss of lung function, he has decided to proceed with thoracoscopy and decortication.”

20. Mr. Dunagan was discharged from OHSU on November 18, 2017.

21. Throughout the records, medical staff at the Multnomah County Detention Center point out on several occasions Mr. Dunagan’s history of hallucinations and delusions along with an inability to cope. Mr. Dunagan asked for medical care on numerous occasions and told medical staff about his chest pain and side pain. The medical staff at the Multnomah County Detention Center failed to provide him with adequate care which allowed the infection to spread rapidly. As a result of Multnomah County Detention Center’s neglect, Mr. Dunagan suffered the following injuries: acute kidney failure with tubular necrosis, pyothorax without fistula, fibrothorax, and enterocolitis due to clostridium difficile. Most troubling is the acute kidney issue. Mr. Dunagan has had irreversible damage done to his body.

///

///

**IV. FIRST CLAIM FOR RELIEF**

**(Section 1983 – Fourteenth Amendment Violation –**

**Deliberate Indifference to Critical Injuries and Serious Medical Needs)**

22. As applicable, Plaintiff incorporates paragraphs 1-21 above.
23. As described above, Defendants were deliberately indifferent to or caused the deliberate indifference to Mr. Dunagan's critical and serious medical needs in violation of the Fourteenth Amendment to the United States Constitution.
24. As described above and at least in part, one or more of Defendants' policies or their well-established official practices were a cause of deliberate indifference to Mr. Dunagan's serious medical needs and, ultimately, a cause of his severe injuries, in violation of the Fourteenth Amendment to the United States Constitution.
25. As a result of the above, Mr. Dunagan is entitled to an award of economic and noneconomic damages against Defendants in amounts to be determined at trial.
26. As a result of the above, Mr. Dunagan is entitled to an award of punitive damages against Defendants in amounts to be determined at trial.
27. Pursuant to 42 USC § 1988, Mr. Dunagan should be awarded attorney fees and litigation expenses/costs against Defendants.

**V. SECOND CLAIM FOR RELIEF**

**(Section 1983 – Fourteenth Amendment Violation –**

**Deliberate Indifference to Medical Needs of Pretrial Detainee Unreasonable**

**Treatment/Punishment of Pretrial Detainee)**

28. As applicable, plaintiff incorporates the above.
29. As described above, Defendants were deliberately indifferent to Mr. Dunagan's serious medical needs and denied him the care he needed to stop the spread of infection, which ultimately caused his severe tortured injuries in violation of the Fourteenth Amendment to the United States Constitution.

30. As described above, the conduct of Defendants violated Mr. Dunagan's Fourteenth Amendment rights because their conduct was unreasonable and/or arbitrary in failing and/or refusing to provide him with treatment for his serious medical needs.
31. As described above and at least in part, one or more of Defendants' policies or their well-established official practices were a cause of the deliberate indifference to Mr. Dunagan's critical injuries and serious medical needs and, ultimately, a cause of his severe injuries, in violation of the Fourteenth Amendment to the United States Constitution.
32. As a result of the above, Mr. Dunagan is entitled to an award of economic and noneconomic damages against Defendants in amounts to be determined at trial.
33. As a result of the above, Mr. Dunagan is entitled to an award of punitive damages against Defendants in amounts to be determined at trial.
34. Pursuant to 42 USC § 1988, Mr. Dunagan should be awarded attorney fees and litigation expenses/costs against Defendants.

## **VI. THIRD CLAIM FOR RELIEF**

### **(Section 1983 – Fourteenth Amendment Violation –**

#### **Unreasonable Conduct and/or Conduct Which Is So Arbitrary That It Shocks the Conscience)**

35. As applicable, plaintiff incorporates the above.
36. As described above, Defendants violated the plaintiff's Fourteenth Amendment rights because their conduct was unreasonable and/or so arbitrary that it shocks the conscience.
37. As described above and at least in part, one or more of Defendants and their official policies, well-established practices, and/or acts caused, or otherwise make them liable for the violation of plaintiff's Fourteenth Amendment rights.
38. As a result of the above, Mr. Dunagan is entitled to an award of economic and noneconomic damages against Defendants in amounts to be determined at trial.

///

39. As a result of the above, Mr. Dunagan is entitled to an award of punitive damages against Defendants in amounts to be determined at trial.

40. Pursuant to 42 USC § 1988, Mr. Dunagan should be awarded attorney fees and litigation expenses/costs against Defendants.

**WHEREFORE**, plaintiff prays for relief from the Court as follows:

1. Assume jurisdiction on this matter over plaintiff's claims;
2. Award plaintiff economic and noneconomic damages against Defendants in amounts to be determined at trial in accordance with the allegations and claims set forth above;
3. Award punitive damages to plaintiff against Defendants in amounts to be determined at trial in accordance with the allegations and claims set forth above;
4. Award plaintiff attorney fees and litigation expenses/costs against Defendants in accordance with the allegations and claims set forth above;
5. Grant such other relief as may be just and proper.

PLAINTIFF DEMANDS A JURY TRIAL.

DATED this 25<sup>th</sup> day of April, 2019.

**WARREN ALLEN LLP**

By: s/ George A. McCoy  
GEORGE A. McCOY, OSB No. 101256  
E: [mccoy@warrenallen.com](mailto:mccoy@warrenallen.com)  
850 NE 122<sup>nd</sup> Ave.  
Portland, OR 97230  
(503) 255-8795  
Of Attorneys for Plaintiff